

House File 2327

H-8352

Amend House File 2327 as follows:

1. By striking everything after the enacting clause and inserting:

<DIVISION I

IOWA COMPREHENSIVE PETROLEUM

UNDERGROUND STORAGE TANK FUND

Section 1. Section 455B.474, subsection 1, paragraph d, subparagraph (2), unnumbered paragraph 1, Code Supplement 2009, is amended to read as follows:

A site shall be classified as either high risk, low risk, or no action required, as determined by a certified groundwater professional.

Sec. 2. Section 455B.474, subsection 1, paragraph d, subparagraph (2), subparagraph division (a), unnumbered paragraph 1, Code Supplement 2009, is amended to read as follows:

A site shall be considered high risk when ~~it is determined~~ a certified groundwater professional determines that contamination from the site presents an unreasonable risk to public health and safety or the environment under any of the following conditions:

Sec. 3. Section 455B.474, subsection 1, paragraph d, subparagraph (2), subparagraph division (b), unnumbered paragraph 1, Code Supplement 2009, is amended to read as follows:

A site shall be considered low risk ~~under any of the following conditions~~ when a certified groundwater professional determines that low risk conditions exist as follows:

Sec. 4. Section 455B.474, subsection 1, paragraph d, subparagraph (2), subparagraph divisions (c) and (e), Code Supplement 2009, are amended to read as follows:

(c) A site shall be considered no action required ~~if and a no further action certificate shall be issued by the department when a certified groundwater professional determines that contamination is below action level standards and high or low risk conditions do not exist and are not likely to occur.~~

(e) A site cleanup report which classifies a site as either high risk, low risk, or no action required shall be submitted by a groundwater professional to the department with a certification that the report complies with the provisions of this chapter and rules adopted by the department. The report shall be determinative of the appropriate classification of the site. ~~However, if the report is found to be and the site shall be classified as indicated by the groundwater professional unless, within ninety days of receipt by the department,~~

1 the department identifies material information in
2 the report that is inaccurate or incomplete, and
3 if based upon inaccurate or incomplete information
4 in the report the risk classification of the site
5 cannot be reasonably determined by the department
6 based upon industry standards, the department shall.
7 If the department determines that the site cleanup
8 report is inaccurate or incomplete, the department
9 shall notify the groundwater professional of the
10 inaccurate or incomplete information within ninety
11 days of receipt of the report and shall work with
12 the groundwater professional to obtain the correct
13 information or additional information necessary
14 to appropriately classify the site. A groundwater
15 professional who knowingly or intentionally makes a
16 false statement or misrepresentation which results in
17 a mistaken classification of a site shall be guilty of
18 a serious misdemeanor and shall have the groundwater
19 professional's certification revoked under this
20 section.

21 Sec. 5. Section 455B.474, subsection 1, paragraph
22 f, subparagraphs (5), (6), and (7), Code Supplement
23 2009, are amended to read as follows:

24 (5) A corrective action design report submitted by
25 a groundwater professional shall be accepted by the
26 department and shall be primarily relied upon by the
27 department to determine the corrective action response
28 requirements of the site. However, if ~~the corrective~~
29 ~~action design report is found to be within ninety days~~
30 of receipt of a corrective action design report, the
31 department identifies material information in the
32 corrective action design report that is inaccurate or
33 incomplete, and if based upon information in the report
34 the appropriate corrective action response cannot be
35 reasonably determined by the department based upon
36 industry standards, the department shall notify the
37 groundwater professional that the corrective action
38 design report is not accepted, and the department
39 shall work with the groundwater professional to
40 correct the material information or to obtain the
41 additional information necessary to appropriately
42 determine the corrective action response requirements
43 as soon as practicable. A groundwater professional
44 who knowingly or intentionally makes a false statement
45 or misrepresentation which results in an improper or
46 incorrect corrective action response shall be guilty of
47 a serious misdemeanor and shall have the groundwater
48 professional's certification revoked under this
49 section.

50 (6) Low risk sites shall be monitored as deemed

1 necessary by the department consistent with industry
2 standards. Monitoring shall not be required on a site
3 which has received a no further action certificate.
4 A site that has maintained less than the applicable
5 target level for four consecutive sampling events shall
6 be reclassified as a no further action site regardless
7 of exit monitoring criteria and guidance.

8 (7) An owner or operator may elect to proceed with
9 additional corrective action on the site. However,
10 any action taken in addition to that required pursuant
11 to this paragraph "f" shall be solely at the expense
12 of the owner or operator and shall not be considered
13 corrective action for purposes of section 455G.9,
14 unless otherwise previously agreed to by the board and
15 the owner or operator. Corrective action taken by an
16 owner or operator due to the department's failure to
17 meet the time requirements provided in subparagraph
18 (5), shall be considered corrective action for purposes
19 of section 455G.9.

20 Sec. 6. Section 455B.474, subsection 1, paragraph
21 h, subparagraphs (1) and (3), Code Supplement 2009, are
22 amended to read as follows:

23 (1) A no further action certificate shall be
24 issued by the department for a site which has been
25 classified as a no further action site or which
26 has been reclassified pursuant to completion of a
27 corrective action plan or monitoring plan to be a no
28 further action site by a groundwater professional,
29 unless within ninety days of receipt of the report
30 submitted by the groundwater professional classifying
31 the site, the department notifies the groundwater
32 professional that the report and site classification
33 are not accepted and the department identifies
34 material information in the report that is inaccurate
35 or incomplete which causes the department to be
36 unable to accept the classification of the site.
37 An owner or operator shall not be responsible for
38 additional assessment, monitoring, or corrective
39 action activities at a site that is issued a no further
40 action certificate unless it is determined that the
41 certificate was issued based upon false material
42 statements that were knowingly or intentionally made
43 by a groundwater professional and the false material
44 statements resulted in the incorrect classification of
45 the site.

46 (3) A certificate shall be recorded with the county
47 recorder. The owner or operator of a site who has been
48 issued a certificate under this paragraph "h" or a
49 subsequent purchaser of the site shall not be required
50 to perform further corrective action solely because

1 action standards are changed at a later date. A
2 certificate shall not prevent the department from
3 ordering corrective action of a new release.

4 Sec. 7. Section 455G.3, Code 2009, is amended by
5 adding the following new subsections:

6 NEW SUBSECTION. 6. For the fiscal year beginning
7 July 1, 2010, and each fiscal year thereafter, there
8 is appropriated from the Iowa comprehensive petroleum
9 underground storage tank fund to the department of
10 natural resources two hundred thousand dollars for
11 purposes of technical review support to be conducted
12 by nongovernmental entities for leaking underground
13 storage tank assessments.

14 NEW SUBSECTION. 7. For the fiscal year beginning
15 July 1, 2010, there is appropriated from the Iowa
16 comprehensive petroleum underground storage tank fund
17 to the department of natural resources one hundred
18 thousand dollars for purposes of database modifications
19 necessary to accept batched external data regarding
20 underground storage tank inspections conducted by
21 nongovernmental entities.

22 NEW SUBSECTION. 8. For the fiscal year beginning
23 July 1, 2010, and each fiscal year thereafter, there
24 is appropriated from the Iowa comprehensive petroleum
25 underground storage tank fund to the department of
26 agriculture and land stewardship two hundred fifty
27 thousand dollars for the sole and exclusive purpose
28 of inspecting fuel quality at pipeline terminals
29 and renewable fuel production facilities, including
30 salaries, support, maintenance, and miscellaneous
31 purposes.

32 NEW SUBSECTION. 9. Beginning September 1, 2010,
33 the board shall administer safety training, hazardous
34 material training, environmental training, and
35 underground storage tank operator training in the
36 state to be provided by an entity approved by the
37 department of natural resources. The training provided
38 pursuant to this subsection shall be available to any
39 tank operator in the state at an equal and reasonable
40 cost and shall not be conditioned upon any other
41 requirements. Each fiscal year, the board shall not
42 expend more than two hundred fifty thousand dollars
43 from the Iowa comprehensive petroleum underground
44 storage tank fund for purposes of administering this
45 subsection.

46 Sec. 8. Section 455G.4, subsection 1, paragraph a,
47 subparagraphs (3) and (5), Code Supplement 2009, are
48 amended to read as follows:

49 (3) ~~The commissioner of insurance, or the~~
50 ~~commissioner's designee.~~ An employee of the department

1 of management who has been designated as a risk manager
2 by the director of the department of management.

3 (5) Two owners or operators appointed by the
4 governor. ~~One of the owners or operators appointed~~
5 ~~pursuant to this subparagraph shall have been a~~
6 ~~petroleum systems insured through the underground~~
7 ~~storage tank insurance fund as it existed on June 30,~~
8 ~~2004, or a successor to the underground storage tank~~
9 ~~insurance fund and shall have been an insured through~~
10 ~~the insurance account of the comprehensive petroleum~~
11 ~~underground storage tank fund on or before October~~
12 ~~26, 1990. One of the owners or operators appointed~~
13 ~~pursuant to this subparagraph shall be self-insured. as~~
14 ~~follows:~~

15 (a) One member shall be an owner or operator who is
16 self-insured.

17 (b) One member shall be a member of the petroleum
18 marketers and convenience stores of Iowa or its
19 designee.

20 Sec. 9. Section 455G.9, subsection 1, paragraphs d
21 and k, Code 2009, are amended to read as follows:

22 d. One hundred percent of the costs of corrective
23 action and third-party liability for a release situated
24 on property acquired by a county for delinquent taxes
25 pursuant to chapters 445 through 448, for which a
26 responsible owner or operator able to pay, other
27 than the county, cannot be found. A county is not
28 a "*responsible party*" for a release in connection
29 with property which it acquires in connection with
30 delinquent taxes, and does not become a responsible
31 party by sale or transfer of property so acquired. In
32 such situations, the board may act as an agent for
33 the county. Actual corrective action on the site
34 shall be overseen by the department, the board, and
35 a certified groundwater professional. Third-party
36 liability specifically excludes any claim, cause of
37 action, or suit, for personal injury including, but
38 not limited to, loss of use or of private enjoyment,
39 mental anguish, false imprisonment, wrongful entry or
40 eviction, humiliation, discrimination, or malicious
41 prosecution. Reasonable acquisition costs do not
42 include any taxes or costs related to the collection
43 of taxes.

44 k. Pursuant to an agreement between the board and
45 the department of natural resources, assessment and
46 corrective action arising out of releases at sites for
47 which a no further action certificate has been issued
48 pursuant to section 455B.474, when the department
49 determines that an unreasonable risk to public health
50 and safety may still exist or that previously reported

1 upon applicable target levels have been exceeded. At
2 a minimum, the agreement shall address eligible costs,
3 contracting for services, and conditions under which
4 sites may be reevaluated.

5 Sec. 10. Section 455G.9, subsection 4, Code 2009,
6 is amended to read as follows:

7 4. *Minimum copayment schedule.*

8 a. An owner or operator shall be required to pay
9 the greater of five thousand dollars or eighteen
10 percent of the first eighty thousand dollars of the
11 total costs of corrective action for that release,
12 except for an innocent landowner claim in which case a
13 copayment is not required.

14 b. If a site's actual expenses exceed eighty
15 thousand dollars, the remedial account shall pay the
16 remainder, as required by federal regulations, of
17 the total costs of the corrective action for that
18 release, not to exceed one million dollars, except that
19 a county shall not be required to pay a copayment in
20 connection with a release situated on property acquired
21 in connection with delinquent taxes, as provided in
22 subsection 1, paragraph "d", unless subsequent to
23 acquisition the county actively operates a tank on the
24 property for purposes other than risk assessment, risk
25 management, or tank closure.

26 Sec. 11. Section 455G.9, subsection 7, Code 2009,
27 is amended to read as follows:

28 7. *Expenses of cleanup not required.* When an
29 owner or operator who is eligible for benefits under
30 this chapter is allowed by the department of natural
31 resources to monitor in place, the expenses incurred
32 for cleanup beyond the level required by the department
33 of natural resources ~~are not~~ may be covered under any
34 of the accounts established under the fund only if
35 approved by the board as cost-effective relative to
36 the department accepted monitoring plan or relative
37 to the repeal date specified in section 424.19. The
38 cleanup expenses incurred for work completed beyond
39 what is required is the responsibility of the person
40 contracting for the excess cleanup. The board shall
41 seek to terminate the responsible party's environmental
42 liabilities at such sites prior to the board ceasing
43 operation.

44 Sec. 12. EFFECTIVE UPON ENACTMENT AND RETROACTIVE
45 APPLICABILITY. The section of this division of this
46 Act amending section 455G.9, subsection 4, being deemed
47 of immediate importance, takes effect upon enactment
48 and applies retroactively to January 1, 2010.

49 DIVISION II
50 BONDING AUTHORITY

1 Sec. 13. Section 455G.2, subsection 1, Code 2009,
2 is amended by striking the subsection.
3 Sec. 14. Section 455G.2, subsection 3, Code 2009,
4 is amended to read as follows:
5 3. "*Bond*" means a bond, note, or other obligation
6 issued by the authority treasurer of state for the fund
7 and the purposes of this chapter.
8 Sec. 15. Section 455G.3, subsection 2, Code 2009,
9 is amended to read as follows:
10 2. The board shall assist Iowa's owners and
11 operators of petroleum underground storage tanks in
12 complying with federal environmental protection agency
13 technical and financial responsibility regulations
14 by establishment of the Iowa comprehensive petroleum
15 underground storage tank fund. The authority treasurer
16 of state may issue its bonds, or series of bonds, to
17 assist the board, as provided in this chapter.
18 Sec. 16. Section 455G.6, subsections 7 through 9,
19 Code Supplement 2009, are amended to read as follows:
20 7. The board may contract with the
21 authority treasurer of state for the
22 authority treasurer of state to issue bonds and do
23 all things necessary with respect to the purposes
24 of the fund, as set out in the contract between the
25 board and the authority treasurer of state. The
26 board may delegate to the authority treasurer of
27 state and the authority treasurer of state shall
28 then have all of the powers of the board which are
29 necessary to issue and secure bonds and carry out the
30 purposes of the fund, to the extent provided in the
31 contract between the board and the authority treasurer
32 of state. The authority treasurer of state may
33 issue the authority's treasurer of state's bonds
34 in principal amounts which, in the opinion of the
35 board, are necessary to provide sufficient funds for
36 the fund, the payment of interest on the bonds, the
37 establishment of reserves to secure the bonds, the
38 costs of issuance of the bonds, other expenditures
39 of the authority treasurer of state incident to and
40 necessary or convenient to carry out the bond issue
41 for the fund, and all other expenditures of the board
42 necessary or convenient to administer the fund.
43 The bonds are investment securities and negotiable
44 instruments within the meaning of and for purposes of
45 the uniform commercial code, chapter 554.
46 8. Bonds issued under this section are payable
47 solely and only out of the moneys, assets, or revenues
48 of the fund, all of which may be deposited with
49 trustees or depositories in accordance with bond
50 or security documents and pledged by the board to

1 the payment thereof, and are not an indebtedness
2 of this state ~~or the authority~~, or a charge against
3 the general credit or general fund of the state ~~or~~
4 ~~the authority~~, and the state shall not be liable for
5 any financial undertakings with respect to the fund.
6 Bonds issued under this chapter shall contain on their
7 face a statement that the bonds do not constitute an
8 indebtedness of the state ~~or the authority~~.

9 9. The proceeds of bonds issued by the
10 authority treasurer of state and not required for
11 immediate disbursement may be deposited with a trustee
12 or depository as provided in the bond documents
13 and invested in any investment approved by the
14 authority treasurer of state and specified in the trust
15 indenture, resolution, or other instrument pursuant
16 to which the bonds are issued without regard to any
17 limitation otherwise provided by law.

18 Sec. 17. Section 455G.6, subsection 10, paragraph
19 b, Code Supplement 2009, is amended to read as follows:

20 b. Negotiable instruments under the laws of
21 the state and may be sold at prices, at public or
22 private sale, and in a manner, as prescribed by the
23 authority treasurer of state. Chapters 73A, 74, 74A
24 and 75 do not apply to their sale or issuance of the
25 bonds.

26 Sec. 18. Section 455G.6, subsection 12, Code
27 Supplement 2009, is amended to read as follows:

28 12. Bonds must be authorized by a trust
29 indenture, resolution, or other instrument of the
30 authority treasurer of state, approved by the board.
31 However, a trust indenture, resolution, or other
32 instrument authorizing the issuance of bonds may
33 delegate to an officer of the issuer the power to
34 negotiate and fix the details of an issue of bonds.

35 Sec. 19. Section 455G.7, Code Supplement 2009, is
36 amended to read as follows:

37 **455G.7 Security for bonds — capital reserve fund —**
38 **irrevocable contracts.**

39 1. a. For the purpose of securing one or more
40 issues of bonds for the fund, the authority treasurer
41 of state, with the approval of the board, may authorize
42 the establishment of one or more special funds, called
43 "*capital reserve funds*". The authority treasurer
44 of state may pay into the capital reserve funds the
45 proceeds of the sale of its bonds and other money
46 which may be made available to the authority treasurer
47 of state from other sources for the purposes of the
48 capital reserve funds. Except as provided in this
49 section, money in a capital reserve fund shall be used
50 only as required for any of the following:

1 ~~a.~~ (1) The payment of the principal of and
2 interest on bonds or of the sinking fund payments with
3 respect to those bonds.
4 ~~b.~~ (2) The purchase or redemption of the bonds.
5 ~~c.~~ (3) The payment of a redemption premium
6 required to be paid when the bonds are redeemed before
7 maturity.
8 ~~b.~~ However, money in a capital reserve fund shall
9 not be withdrawn if the withdrawal would reduce the
10 amount in the capital reserve fund to less than the
11 capital reserve fund requirement, except for the
12 purpose of making payment, when due, of principal,
13 interest, redemption premiums on the bonds, and making
14 sinking fund payments when other money pledged to the
15 payment of the bonds is not available for the payments.
16 Income or interest earned by, or increment to, a
17 capital reserve fund from the investment of all or part
18 of the capital reserve fund may be transferred by the
19 authority treasurer of state to other accounts of the
20 fund if the transfer does not reduce the amount of the
21 capital reserve fund below the capital reserve fund
22 requirement.
23 2. If the authority treasurer of state decides
24 to issue bonds secured by a capital reserve fund,
25 the bonds shall not be issued if the amount in the
26 capital reserve fund is less than the capital reserve
27 fund requirement, unless at the time of issuance of
28 the bonds the authority treasurer of state deposits
29 in the capital reserve fund from the proceeds of the
30 bonds to be issued or from other sources, an amount
31 which, together with the amount then in the capital
32 reserve fund, is not less than the capital reserve fund
33 requirement.
34 3. In computing the amount of a capital reserve
35 fund for the purpose of this section, securities in
36 which all or a portion of the capital reserve fund
37 is invested shall be valued by a reasonable method
38 established by the authority treasurer of state.
39 Valuation shall include the amount of interest earned
40 or accrued as of the date of valuation.
41 4. In this section, "*capital reserve fund*
42 *requirement*" means the amount required to be on
43 deposit in the capital reserve fund as of the date of
44 computation.
45 5. To assure maintenance of the capital reserve
46 funds, the authority treasurer of state shall, on
47 or before July 1 of each calendar year, make and
48 deliver to the governor the authority's treasurer of
49 state's certificate stating the sum, if any, required
50 to restore each capital reserve fund to the capital

1 reserve fund requirement for that fund. Within
2 thirty days after the beginning of the session of the
3 general assembly next following the delivery of the
4 certificate, the governor may submit to both houses
5 printed copies of a budget including the sum, if any,
6 required to restore each capital reserve fund to the
7 capital reserve fund requirement for that fund. Any
8 sums appropriated by the general assembly and paid
9 to the authority treasurer of state pursuant to this
10 section shall be deposited in the applicable capital
11 reserve fund.

12 6. All amounts paid by the state pursuant to this
13 section shall be considered advances by the state and,
14 subject to the rights of the holders of any bonds of
15 the authority treasurer of state that have previously
16 been issued or will be issued, shall be repaid to the
17 state without interest from all available revenues of
18 the fund in excess of amounts required for the payment
19 of bonds of the authority treasurer of state, the
20 capital reserve fund, and operating expenses.

21 7. If any amount deposited in a capital reserve
22 fund is withdrawn for payment of principal, premium,
23 or interest on the bonds or sinking fund payments with
24 respect to bonds thus reducing the amount of that fund
25 to less than the capital reserve fund requirement, the
26 authority treasurer of state shall immediately notify
27 the governor and the general assembly of this event and
28 shall take steps to restore the capital reserve fund
29 to the capital reserve fund requirement for that fund
30 from any amounts designated as being available for such
31 purpose.

32 Sec. 20. Section 455G.8, subsection 2, Code 2009,
33 is amended to read as follows:

34 2. *Statutory allocations fund.* The moneys
35 credited from the statutory allocations fund under
36 section 321.145, subsection 2, paragraph "a", shall
37 be allocated, consistent with this chapter, among
38 the fund's accounts, for debt service and other fund
39 expenses, according to the fund budget, resolution,
40 trust agreement, or other instrument prepared or
41 entered into by the board or authority treasurer of
42 state under direction of the board.

43 Sec. 21. REPEAL. Section 16.151, Code 2009, is
44 repealed.

45 Sec. 22. REPEAL. 1989 Iowa Acts, chapter 131,
46 section 63, as amended by 2009 Iowa Acts, chapter 184,
47 section 39, is repealed.

48 Sec. 23. EFFECTIVE UPON ENACTMENT. This division
49 of this Act, being deemed of immediate importance,
50 takes effect upon enactment.>

1 2. Title page, line 2, after <fund> by inserting
2 <and including effective date and retroactive
3 applicability provisions>
4 3. By renumbering as necessary.

S. OLSON of Clinton